

# United States Senate

WASHINGTON, DC 20510

February 27, 2020

The Honorable Mary B. Neumayr  
Chairman  
The Council on Environmental Quality  
730 Jackson Place, NW  
Washington, DC 20503

RE: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket ID: CEQ-2019-0003

Dear Ms. Neumayr:

We write in strong opposition to the Council on Environmental Quality's (CEQ) proposed rule to fundamentally re-write the National Environmental Policy Act (NEPA) regulations. In particular, we believe that proposing to no longer require federal agencies to account for cumulative environmental impacts and indirect effects and allowing companies to prepare their own environmental impact statement is short-sighted, counter to the law, and fails to protect Americans from the public health and economic threats of climate change. This proposal is yet another example of the Trump Administration's entrenched climate denial and willingness to prioritize ideology even as it risks the health of Americans.

Today, Category 5 hurricanes, drought, raging wildfires, and extreme flooding events are commonplace. Climate change has caused these extreme weather events to occur more frequently and with greater intensity than even twenty years ago, placing enormous burdens on the American people and economy. Instead of taking steps to respond to the growing risks, this proposal is untethered from our climate reality.

In its proposal, the Administration would remove the consideration of cumulative environmental impacts and indirect effects from its current regulations. In addition, the Administration proposes to revise NEPA regulations further to state that "effects should not be considered significant if they are remote in time, geographically remote, or the result of a lengthy causal chain" and that, "effects do not include effects that the agency has no authority to prevent... or would occur regardless of the proposed action." Both of these proposed changes are intended to result in the removal of the requirement to include climate change among the environmental impacts that must be considered prior to beginning federal projects or other major activities.

In our view, there are several reasons why such changes are unlawful and would result in consequential impacts if this proposal was finalized and implemented.

## The Proposal Conflicts with the Bipartisan History of NEPA Implementation

Fifty years ago, NEPA passed by an overwhelming bipartisan majority in Congress and was signed into law by President Richard Nixon. NEPA required federal agencies for the first time to identify and publicly disclose significant environmental impacts, and social, economic or public health-related impacts that may occur with a federal project or activity before the commencement of the project or activity. Since its enactment, NEPA has served as America's "basic national charter for protection of the environment"<sup>1</sup> and has been used as a model for environmental protections all over the world.<sup>2</sup>

The NEPA statute recognizes "the profound impact of man's activity on the interrelations of all components of the natural environment."<sup>3</sup> The statute also recognizes the requirement to meet the needs of "present and future generations of Americans", and requires the federal government to assess "*any* [emphasis added] adverse environmental effects which cannot be avoided" by a proposed federal action.<sup>4</sup>

Since the beginning of its implementation of NEPA in 1970, a mere four months after its passage, President Nixon's CEQ stated that "the statutory clause 'major Federal actions significantly affecting the quality of the human environment' is to be construed by agencies with a view to the overall, cumulative impact of the action proposed (and of further actions contemplated)." CEQ regulations reflect this guidance, defining cumulative impacts in regulation to include an "impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."<sup>5</sup> In 1997, CEQ put it best: "Only by reevaluating and modifying alternatives in light of the projected cumulative effects can adverse consequences be effectively avoided or minimized. Considering cumulative effects is also essential to developing appropriate mitigation and monitoring its effectiveness."<sup>6</sup>

Accounting for cumulative impacts in NEPA means federal agencies cannot review the environmental consequences of a federally funded project in a vacuum, nor can agencies review effects as if the project is frozen in time. Before taking action, Federal agencies must provide the American public with an understanding of how a project may contribute to existing environmental problems and of the environmental effects that may occur during a project's lifetime. For example, over the lifetime of an oil and gas drilling project on federal land, in addition to excluding from consideration any air toxics being emitted by nearby polluters, the regulatory changes would also allow cumulative air toxics from nearby or ongoing drilling operations or other sources that persist and bioaccumulate to result in dangerous levels of pollution in the future. Assessing these cumulative impacts helps ensure that the federal government, along with states and local communities, are fully aware of all the potential compounded risks from a project.

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<sup>1</sup> 40 C.F.R. § 1500

<sup>2</sup> <https://ceq.doe.gov/>

<sup>3</sup> 42 U.S.C. 4331

<sup>4</sup> 42 U.S.C. 4332

<sup>5</sup> 40 CFR § 1508.7

<sup>6</sup> <https://ceq.doe.gov/docs/ceq-publications/ccenepa/exec.pdf>

## The Proposal Ignores Nearly a Half-century of Legal Precedent

Courts have determined that assessing cumulative impacts in the NEPA process requires federal agencies to determine whether greenhouse gas (GHG) emissions from a federally funded project could exacerbate the climate crisis and whether that project can withstand the potential impacts of the climate crisis.<sup>7</sup> Just like the example above regarding oil field air toxics emissions, a federally funded project's initial GHG emissions may not look like much. However, combine that project's GHG emissions with other existing GHG emissions over the life of a project – which could be decades – and the significant climate impacts become clearer. The courts have consistently stated that these climate effects for federally funded projects must be accounted for in the decision making process.

Yet federal agencies in the Trump Administration are repeatedly ignoring the rule of law when it comes to NEPA, cumulative impacts, and climate change. Since President Trump's decision to revoke the previous Administration's guidance to federal agencies on how to account for climate change in the NEPA process and CEQ's refusal to finalize a replacement,<sup>8</sup> the courts have ruled against the Administration at least twelve times in cases in which federal agencies have failed to address carbon pollution.<sup>9</sup> For example, in *WildEarth Guardians v. Ryan Zinke*, the D.C. District Court ruled in March 2019 that the NEPA analysis for oil and gas leases in Wyoming, Utah and Colorado were inadequate because "NEPA required more robust analyses of GHG [greenhouse gas] emissions from oil and gas drilling and downstream use."<sup>10</sup> As the court held, "Even under the heightened causation standard established by *Public Citizen* and *Sierra Club (Freeport)*, downstream GHG emissions from fossil fuel use are an indirect effect of BLM's oil and gas leasing program at issue here."<sup>11</sup>

Instead of heeding the direction of the courts, this proposal doubles down on a failing and illegal policy. The proposal directs federal agencies to disregard indirect effects and cumulative impacts in the NEPA process, thereby eliminating the established legal requirement to consider climate change in the federal decision-making process. This is a hallmark of the Trump Administration's entrenched climate denial - and while that itself may come as no surprise - this rollback would also unlawfully overturn decades of well-established precedent, through Democratic and Republican Administrations alike.

## The Proposal Would Harm Health and the Economy if Finalized

The National Oceanic and Atmospheric Administration (NOAA) reports the cumulative costs of extreme weather and climate events in the United States since 1980 is now \$1.75 trillion.<sup>12</sup> The past decade has been especially damaging, with costs exceeding \$800 billion over the decade from 119 separate events that reached or exceeded \$1 billion. That is more \$1 billion weather and climate events than the previous two decades combined. The majority of last year's economic damages from extreme weather events came from destructive flooding that cost

<sup>7</sup> See, e.g., *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508 (2007).

<sup>8</sup> <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-energy-independence-economic-growth/>.

<sup>9</sup> <https://www.americanprogress.org/issues/green/news/2019/05/29/470374/12-climate-wins-national-environmental-policy-act/>

<sup>10</sup> *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41 (D.D.C. 2019).

<sup>11</sup> *Id.*

<sup>12</sup> <https://www.climate.gov/news-features/blogs/beyond-data/2010-2019-landmark-decade-us-billion-dollar-weather-and-climate>

farmers across Missouri, Arkansas and the Mississippi River their livelihoods and cost the American people in total \$20 billion in damages.<sup>13</sup>

Beyond direct health impacts from extreme weather events, scientists and medical professionals have linked climate change to increased ground-level ozone, particle pollution and allergens in the air; to deadly high temperatures; and to more pests in our food and water – all of which are having a negative impact on human health.<sup>14</sup> The National Climate Assessment released in 2018 determined that from the additional air pollution exacerbated by climate change alone, there will be an estimated increase in annual health care costs by up to \$26 billion.<sup>15</sup>

Moreover, according to the Government Accountability Office (GAO), failing to account for climate change when we build our nation's infrastructure, our military installations or energy projects on public lands only further puts our communities, national security and economy at high risk. The Trump Administration's climate denial actions – including this proposal – fail to protect the country's economy. In GAO's 2019 High Risk List report, GAO found the Trump Administration has "revoked policies that had identified addressing climate change as a priority" and are taking us in the wrong direction when it comes to reducing our nation's risk to climate change.<sup>16</sup> GAO concluded that this Administration's actions "potentially increases the federal government's fiscal exposure to climate change."<sup>17</sup>

Federal actions that trigger the NEPA process can impact generations, so it is imperative that cumulative environmental impacts, and direct and indirect climate effects more broadly, are included in the NEPA environmental review process. This is why we call on you to reject the proposed revisions and instead reinstate guidance to the federal agencies regarding how to address climate change in the NEPA process.

As we examine NEPA's legacy over the last 50 years, we cannot turn a blind eye to climate change, the greatest environmental challenge of our time. We must ask how we can improve NEPA to ensure that every decision made and every dollar spent today will not only improve the infrastructure, health, quality of life and environment in our communities, but also protect our climate for future generations to come.

As we continue to hear from our constituents and local and state officials on this matter, we will likely have additional comments for you in the future on this issue. We request that this letter be added to Docket ID: CEQ-2019-0003. Thank you for the consideration of our concerns.

With best personal regards, we are,

Sincerely yours,

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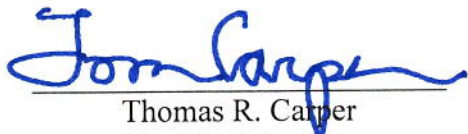
<sup>13</sup> *Id.*

<sup>14</sup> <https://nca2018.globalchange.gov/chapter/14/>

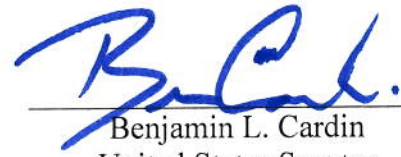
<sup>15</sup> *Id.*

<sup>16</sup> <https://www.gao.gov/assets/700/697245.pdf>

<sup>17</sup> *Id.*



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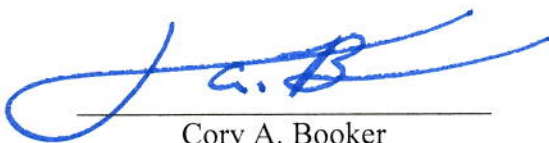
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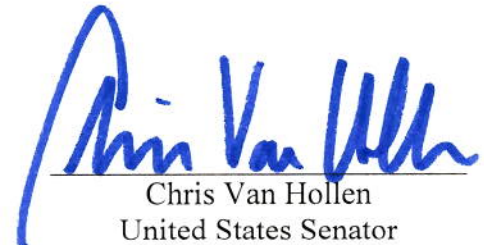
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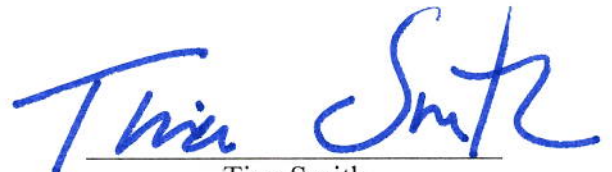
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